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ABSTRACT

A study was conducted to examine plain language legislation in the 50 states and to evaluate the progress made in simplifying government regulations as a result of President Carter's executive order mandating the use of clear language in regulations. In the first part of the study, laws and bills relating to plain language in consumer contracts and insurance policies were collected from legislative information offices in each state. These bills and laws were then examined for common elements, means of enforcement, readability standards, and the readability of the bills and laws themselves. Information regarding compliance with the executive order was obtained by direct inquiry and examination of the Federal Register. The findings of the first part of the study revealed that only New York has passed a consumer contract plain language law, while 16 other states have considered such legislation. Enforcement provisions are weak in the bills. Only New Jersey included specific readability standards in its bill, and all of the bills required at least college level reading skills. Regarding insurance readability, most bills established a minimum Flesch score of 50 and could be enforced by state insurance commissions. Concerning the executive order, findings showed that all executive departments have plans for developing regulations, and most are beginning to simplify regulation language. Except for the Justice Department, all have published the plans in the Federal Register as required. (Copies of the New York and New Jersey bills are appended.) (Author/FL)

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THE STATUS OF PLAIN LANGUAGE LEGISLATION IN THE FIFTY STATES AND PRESIDENT CARTER'S EXECUTIVE ORDER 12044

A THESIS

SUBMITTED TO THE FACULTY

OF THE GRADUATE SCHOOL OF EDUCATION

OF

RUTGERS

THE STATE UNIVERSITY OF NEW JERSEY

BY

LINA GROGAN

IN PARTIAL FULFILLMENT OF THE

REQUIREMENTS FOR THE DEGREE

OF

MASTER OF EDUCATION

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ABSTRACT

The purpose of the study was: 1. to examine plain language legislation in the fifty states and 2. to evaluate progress made in simplifying government regulations as a result of President Carter's Executive Order 12044. (This order mandated use of clear language in regulations.)

The first part of the study was conducted by collecting laws and bills relating to plain language in consumer contracts and insurance policies. These were collected by contacting legislative information offices in each state. The bills and laws were examined for: 1. common elements, 2. means of enforcement, 3. readability standards, and 4. readability of the bills and laws themselves.

Information regarding compliance with President Carter's Executive Order 12044 was obtained by direct inquiry and examination of the Federal Register.

The findings regarding consumer contract plain language laws revealed that only one state (New York) has passed such a law. Sixteen others have considered such legislation. Enforcement provisions are weak in the bills. Only one state has included specific readability standards in its bill (New Jersey). All of the bills examined required at least college level reading skills, scoring grade 14 or above on the Fry Readability graph.

Regarding insurance readability, information was received for six laws and twelve bills. Most established a minimum Flesch score of 50 (10th to 12th grade level) and could be enforced by state insurance commissions.

In the area of the Executive Order, it was found that all of the executive departments have developed new plans for developing regulations. All except the Justice Department have published the plans in the Federal Register as required. Most departments are now beginning to simplify regulations. HEW has already made significant progress.

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CHAPTER I

INTRODUCTION

The present study is concerned with state laws and bills which attempt to insure that consumer contracts and insurance policies are written in plain language. The laws and bills are analyzed for each of the states which have considered plain language or insurance readability legislation. In addition, the study includes an examination of President Carter's Executive Order (12044) mandating use of plain language in government regulations. Compliance to the order by executive departments is investigated.

The problem of difficult language in legal writing is a longstanding one. Historically, many legal documents have been written by lawyers in legal language. As a result, the documents have frequently been difficult to comprehend. This has created innumerable problems for those who have signed contracts which they could not understand.

Another area in which complicated language has habitually been used is in government regulations. In 1978, President Carter issued an executive order mandating use of plain language by executive agencies. A New York Times editorial recognized the magnitude of the problem he was attacking by stating:

> We did not realize until last week quite how ambitious President Carter really is. In his fire-side chat he outlined a series of aims: revitalizing the economy, getting a grip on energy policy, overhauling welfare, reforming taxes. But these goals are mundane by comparison with his confident assertion that, "We will cut down on government regulations and make sure that those that are written are in plain English for a change," (As Per Paragraph, 1977).

Legal contracts and government regulations should be understood by those for whom they are intended. Therefore, it seems evident that the literacy level of the adult population should be considered in writing contracts and regulations.

Statement of the Problem

This study is concerned with three areas. The first two areas consider legislation at the state level. First, is consideration of legislation requiring plain language in consumer contracts. Second is an examination of insurance readability legislation. The third area involves the use of plain language at the federal level. This is an examination of how executive departments have complied to President Carter's Executive Order requiring plain language in government regulations.

Since there is some movement in state legislatures to act on plain language bills, the study is designed to analyze exactly what the bills and laws require. Questions to be answered in regard to legislation at the state level are:

1. Which states have introduced or passed bills requiring use of plain language in consumer contracts and insurance policies?
2. What are some common elements in the bills and laws?
3. How are standards for plain language established?
4. How can the requirements be enforced?
5. What is the readability level of the bills and laws as measured by the Fry Readability Formula?

The second area of concern regards requirements for plain language at the federal level. This relates to President Carter's Executive Order which requires plain language in regulations issued by executive agencies. Questions to be answered in this area are:

1. What are the requirements of the Executive Order?
2. In what ways have federal executive agencies complied with President Carter's Executive Order regarding plain language?

Importance of the Study

The plain language movement is an important one because it provides protection to the large segment of society which has difficulty understanding contracts and regulations.

The study has value in presenting an overview of the status of plain language legislation in the states. As the movement toward this type of legislation grows, background on legislation which has already been developed can be helpful.

Examination of the progress made by executive agencies in complying with President Carter's Executive Order can shed light on effective approaches for writing regulations in plain language. If there is real evidence of progress in this area, the need for more widespread requirements for use of plain language may be recognized.

Overview of the Study

The remaining chapters in this study are organized as follows.

Chapter II is a review of the literature. This review is presented in five sections. The first concerns the need for plain language in government regulations. Newspaper articles dealing specifically with plain language legislation are examined in section two. The third section considers the problem of literacy. The fourth is a presentation of some basic rules for writing plain language. Last is a review of the concept of readability and three formulas used in laws and bills.

Following the literature review is Chapter III in which the procedures used in collecting information and organizing the study are discussed.

Chapter IV is a presentation of the findings of the study. Tables are presented which show which states have considered or passed plain language legislation. Also, information is analyzed regarding: 1. common elements and distinguishing features in the legislation; 2. standards for plain language specified; 3. enforcement provisions; and 4. readability level of the bills and laws. A discussion of the findings also appears in this chapter.

Other information presented in this chapter regards plain language requirements at the federal level. Information regarding the scope of President Carter's Executive Order 12044 and compliance by executive agencies is presented.

Conclusions, a summary and suggestions for further research appear in Chapter V.

CHAPTER II

REVIEW OF THE LITERATURE

The following review of the literature is divided into five sections. The first deals with obscure language at the federal level. The second concerns difficult language in insurance forms and other legal contracts. This section includes a brief overview of special interest groups opposed to plain language legislation. Section three deals with the problem of literacy in the nation. The fourth section presents some basic rules for writing in plain language. The last section reviews the concept of readability and the three formulas used in existing and proposed legislation.

Obscure Language At the Federal Level

There is ample evidence that government publications and regulations require much simplification to become understandable to the average person. Recently, President Carter referred to this problem at a signing ceremony for his executive order regarding use of plain language at the federal level. He stated that, "to many citizens who have to deal with it on a regular basis, the federal government has become like a foreign country, complete with its own interests and its own language," (Carter, 1978, p. 561).

In reviewing the literature it is evident that the problem of obscure language in government writing is not a new one.

In 1946, Maury Maverick coined a word (gobbledygook) describing government language. In his article, Maverick, a new civil service employee, described the language he heard and read. His reaction was as follows:

> I soon began to realize that the users of Latin phrases and big words, the double-talkers and long-winded writers were moving in on us like an invisible empire. In their wake they were creating confusion, dullness and slow down (Flesch, 1946).

Maverick's term of gobbledygook has continued in use. And the gobbledygook he described has continued to flourish.

Mario Pei (1969) refers to gobbledygook almost thirty years later in writing about bureaucratic language. He states that the guiding principle of bureaucratic gobbledygook is to never say in one short word anything that can be said in ten long ones. He points out that such language is not a phenomenon unique to modern civilization. In fact, such language was common in medieval legal writing.

An interesting analysis of use of difficult language is made by Hayakawa (1972), a linguist and senator from California. He points out that a learned vocabulary has two functions. The first is to communicate ideas. The second is to arouse respect and confer prestige on those who use it. Hayakawa states that when the social function of a learned vocabulary becomes more important than the communicative function, communication is bound to suffer.

Examples of bureaucratic language which needs simplification abound in the literature. A few are noted here, but any number can be found in most government regulations.

Representative Richard Poff of Virginia reports the following. The Defense Department refers to a shovel as a combat emplacement evacuator. The bureau of Public Roads call oil drums placed around highway obstructions, impact attenuation devices. The Navy calls high waves which cause trouble to shipping, climatic disturbances at the air-sea interface (Pei, 1973).

Another example of outlandish government use of language appeared recently in an HEW review of a remedial reading program which it sponsored. The report read: "The objectivities did not specify to the quantifiable of the success of the proposed program," (Topics, 1978).

Givens cites another absurd example from the Federal Trade Commission.

> Notice: Any holder of this consumer credit is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder (Givens, 1978, p. 484).

The New York Times reports that in the 100 word section of the Federal Internal Revenue Code there are sixteen cross references to other code sections. These code sections in turn have other cross references (Goldstein, 1978).

In signing the Executive Order for plain language, President Carter quoted old and new versions of an FCC regulation affecting CB owners.

> Except as provided in paragraph B of this section, applications, amendments thereto, and related statements of fact required by the Commission shall be personally signed by the applicant, if the applicant is an individual.

The new version of this regulation reads: "If you are an individual, you must sign your own application personally," (Carter, 1978, p. 562).

In The Art of Plain Talk, Rudolf Flesch includes an entire chapter on how to read the Federal Register. He points out that the writing in the Federal Register is designed to make reading as difficult as possible. The chapter offers techniques for breaking down the difficult writing into sentences that make sense.

The above examples are cited from various published articles and books. However, it is easy to find further examples of difficult to understand written government materials by attempting to read regulations.

Difficult Language in Legal Contracts

Examples of difficult to read insurance policies, leases, deeds, loan agreements, etc., need not be presented here. Everyone who has ever tried to understand their insurance coverage has had first hand experience with the confusing language of such contracts.

Consumer Reports tested a number of insurance policies in 1973 using the Flesch scale. They found one policy with a score of 11

and another with a score of 12 (Once Over, 1973). This represents graduate level reading. Best's Review, an insurance magazine, states that most insurance policies score in the minus range, which is even more difficult (Esposito, 1975). It appears, therefore, that insurance policies have been written at a graduate school level or higher in the past.

Despite this fact, in 1973, Benjamin Schenck, Superintendent of Insurance in New York stated that he considered measuring readability of insurance forms a low priority (Once Over, 1973).

According to Francis X. Hayes, Assistant County Counsel in Hudson County (NJ) and one of the drafters of New Jersey's proposed plain language legislation, insurance companies issue manuals to their claim adjusters which are hundreds of pages long. These explain and interpret the language of the homeowner and liability policies for the adjusters (Third Try for Plain English, 1978).

Opposition to plain language legislation has come, as can be expected, from insurance, business, bank, real estate and legal interests.

One reason given for opposition is that regulation will be difficult. It is pointed out that in previous efforts to simplify insurance forms, regulatory agencies have been charged with overseeing compliance. In the present bills covering wider areas of contracts, no regulatory agencies exist for supervision. This is regarded by some as a problem which will lead to much litigation (Cerra, 1977).

Another reason cited for opposition is that guidelines are difficult to define. It is felt that with insufficient guidelines, what is actually required by law is unclear (Meislin, 1977).

Another viewpoint in opposition to plain language legislation suggests that perhaps the literacy level of those having difficulty reading contracts should be raised instead of having the government apply readability measures to contracts (Editorial, Asbury Park Press, 1978).

Opposition to plain language laws is strong among lawyers. The reason they present for this opposition is that legal language must be very exact. They claim that in simplifying it, it will become less exact. This reasoning may have some basis in specialized cases, but appears generally unfounded.

In fact, some phrases commonly used by lawyers appear not to be understood by the lawyers themselves. In an article in the New Jersey Law Journal, Francis Hayes recounts having asked twelve lawyers the meaning of, "know all men by these presents," (June 15, 1978, p. 25). None knew the meaning, though all said they wrote it frequently.

One New York Times article asserts that according to some estimates, up to 20% of all litigation results from contracts which are poorly worded (Haberman, 1977).

An excellent background of legal cases relevant to consumer contract plain language legislation is presented by Richard Givens in the New York Law Journal. He points out that, "the basic principle underlying the Sullivan law is the common law doctrine that a party cannot be held to contract provisions not likely to have been comprehended (and thus agreed to) by the party," (1978, p. 480).

Nevertheless, bar associations contend that the laws will result in increased litigation. Wilbur Friedman (Chairman of the Special Committee on Consumer Agreements of the New York Bar Association) comments on this matter in a letter to The New York Times. He states, "the door is being opened to an unlimited amount of a new type of litigation to burden our already overloaded courts (Friedman, 1978).

The President of the New Jersey Bar Association concurs. In fact, his association warns that not allowing use of technical legal language can be dangerous (Jackman Speaks Out, 1978).

However, it would be unfair to suggest that all insurance, legal, bank and business interests oppose such laws.

For example, writing in the Bergen County Record, Hayes, a lawyer himself, states:

> Shall lawyers be allowed to continue the sophisticated rip-off of the consumer when he buys a house because the lawyer is necessary to explain the complex legal documents? If the truth were known, lawyers are about as necessary as warts at a simple house closing (Hayes, 1978).

In a letter to the New Jersey Law Journal he continues in the same vein:

> Let's face it, brothers. Isn't the real unexpressed reason for the Bar's opposition to the plain language laws, fears that such laws will hurt us in the pocketbook?
>
> Look at all the fat fees we might lose if the public didn't have to bring legal documents to us to explain them.

> Look at all the fat fees we will lose when we no longer will be asked to make something legal by hypocritically adding a ton of legal gibberish to it (Letter, NJLJ, 1978).

In the insurance industry there have also been some advocates of simplifying language. The movement in this direction began as a result of an action taken by Mr. H. B. Denenberg, Pennsylvania insurance commissioner in 1973. At that time he rejected a policy because it was not easy enough to read. That was the first time readability was used as a reason for rejecting a policy (Esposito, 1975).

The insurance company with the policy rejected by Denenberg went on to become a leader in simplifying policies. By 1975 it had issued a policy with a Flesch score of 42. Flesch was hired by another company and produced a policy with a score of 60. This is about eighth or ninth grade reading level.

In regard to banks, it was Citibank which first issued a very simple loan agreement. This was done before any legislation required them to do so.

In any case, the issue of plain language legislation has become an emotionally heated one. Because it is a relatively new one, no one is really certain of what the effects will be.

The Problem of Literacy

The problem of contracts and regulations which are difficult to understand is a very real one for a large segment of our society. It

is one to which educators must address themselves as they attempt to prepare students to cope with everyday reading problems in their lives.

Determining the functional literacy level of the population is a difficult problem. It is complex not only because of problems of measurement, but also because of differing concepts and definitions of what constitutes functional literacy (Bormuth, 1977).

Resnick and Resnick define functional literacy as the ability to read common texts such as newspapers and manuals and to use the information gained, usually to secure employment (1977, p. 383). This definition reflects current thought in the field.

In the past, literacy was measured in terms of grade levels or years in school. A 1970 Census Bureau survey of literacy establishes a minimum of six years of schooling as necessary for literacy. The survey concludes that five percent of adults over 25 are functionally illiterate.

However, Bormuth (1977) states that there is evidence that number of years of schooling is not a good indicator of reading ability. He states that the functional illiteracy level is probably much higher than the Census Bureau survey indicates. Sharon (1972) reaches the same conclusion in an Educational Testing Service report.

Bormuth conducted a study in which he assessed the ability of subjects to understand newspaper articles. He concluded that the average person needs 10.5 years of school before he can understand half of the articles in newspapers (1977).

Reading skill is sometimes assessed by examination of achievement test scores. Fry (1978) reports that using achievement test scores of twelfth graders, about 20% read below the ninth grade level. This figure does not include dropouts. Unfortunately, the grade level scores do not provide information on the kinds of real world reading tasks a person can perform (Bormuth, 1977).

A Harris and Associates poll in 1970 produced a widely accepted estimate of about 18 million people who are functionally illiterate (Peck & Kling, 1977).

Currently, literacy assessments have moved away from grade level designations (Peck & Kling, 1977). Recent approaches to assessing literacy are geared toward criterion referenced tests. These tests are geared to determining reading ability as related to everyday reading needs. Among the skills these tests measure are ability to follow simple written directions and to fill out applications and forms.

The National Assessment of Educational Progress which was conducted in 1974 included such a test. The results of the test showed that a large proportion of the adult population has real difficulty with relatively simple items. One test item required readers to draw two lines, three circles and a triangle to form a specific pattern. The directions for the item were broken down into five steps. The item was missed by 41% of those tested (Fry, 1978).

Bormuth makes a point regarding literacy which is relevant when considering readability of consumer contracts or government regulations. He states: "the kind and amount of reading skill that a person has is just one of the factors that determines his

literacy. The other major factor is the readability of the materials the person is confronted with," (1977, p. 66).

This is where the problem lies with many contracts and regulations. These are commonly written in a form difficult to understand by even highly literate people. The literacy level of the society has not been considered by most writers of consumer contracts or government regulations.

Writing in Plain Language

Many lawyers contend that the precision of contracts will be lost if the contracts must be written in everyday language. Plain language advocates do not believe this to be true. They believe basic rules of writing can be applied to writing legal contracts or regulations.

The problem of simplifying legal language has been addressed by a number of writers. It is pointed out by Lavery in The Lawyer's Treasury (1950) that basic rules of clear writing should be applied to legal documents as well as to any other form of writing.

A number of guidelines for writing in plain language have been gathered from the literature. These are all applicable to writing regulations or contracts.

Rudolf Flesch has written a number of books on writing clearly. A list of his basic rules for writing clearly can be found on the inside cover of How to Think, Write and Speak More Effectively (1960). A number of these basic rules are quoted or cited below.

Among the basic rules Flesch states are: write as you talk, use contractions, use the first person, put yourself in the reader's place and go from the rule to the exception. These are very basic rules. However, at present they are seldom used in writing contracts and regulations.

Other aspects of clear writing to be discussed in the following paragraphs are organization, use of captions or headings and length of paragraphs and sentences. Some components of clear sentences are also considered.

Regarding the organization of written materials, Flesch (1960) stresses the necessity of a planned beginning, middle and end. The importance of organization is also stressed by Ewing in Writing for Results in Business, Government and the Professions (1974). Both believe the point of the text should be clearly stated at the beginning. Also, texts should be clearly divided and captioned to keep readers informed of the organizational plan.

Not only should there be a clear organizational plan for the overall text, but paragraphs and sentences must be in clear and logical order (Ewing, 1974). This is important if the relationship of ideas is to be clear to readers.

Sentence length is also a major factor in clear writing. Flesch (1960) points out the importance of starting a new sentence for each new idea. Writers of contracts and regulations would do well to remember this advice.

Short sentences are also advocated by Fry (1977), Ewing (1974) and Orwell (1974). Generally speaking, short sentences contribute

to easier readability. However, some variation in sentence length is necessary to avoid monotony.

One way to help keep sentences clear is to keep the subject and verb close together (Ewing, 1974). This matter is discussed in Fry's 'Kernel Distance Theory' (1977). In this theory the subject and verb are considered the kernel of a sentence. The theory suggests that the reading ease of a sentence is directly related to the distance between the parts of the kernel (subject and verb). Also, the closer the kernel is to the beginning of a sentence, the easier the sentence will be to read.

Short, well written sentences can still be very difficult reading if the vocabulary is technical or difficult. Therefore, writers should be careful to avoid difficult terms. Both Orwell and Flesch advocate substituting short words for long ones whenever possible. Neither of these writers consider the use of long words to contribute positively to clear writing style.

Use of the active voice and a personal subject in writing is advised by both Flesch and Orwell. Writers of contracts and regulations seldom follow such advise. However, it can be very effective in clarifying requirements.

Flesch has successfully rewritten insurance policies using his rules for clear writing. Here is an example of a paragraph before rewriting.

> If total disability occurs during the grace period for payment of a premium, such premium shall not be waived, nor refunded if paid;

> provided that failure to pay such premium within the grace period therefor shall not of itself invalidate a claim hereunder for total disability commencing during such grace period if such premium with compound interest at the rate of 5 percent per annum is paid at the time due proof of the claim is furnished by the Company.

As rewritten, the paragraph becomes much more readable.

> You have a 31 day grace period to pay a premium after it is due. Suppose you become disabled during such a period before you have paid the premium. In such a case you can stop paying any more premiums, but you'll still have to pay the one that's already overdue. You have time to pay it (with 5 percent interest) when you furnish us proof that you're totally disabled. (Flesch, 1949, p. 152-153)

All of the suggestions for writing clearly which have been cited in this section can be used in writing contracts and regulations. Though there are certainly other factors which should be considered, the above provide some idea of some basic elements of plain language.

The Concept of Readability

A problem which is inevitable in trying to legislate use of plain language in legal contracts is arriving at a definition of what constitutes plain language. If a bill states only that language must be understandable to the average person, it is subject to problems of interpretation.

One possible solution to this problem has been the use of readability formulas. By setting specific standards of readability, there is less leeway for individual interpretations of what constitutes language understandable to an average adult.

Readability formulas are mathematical formulas used to evaluate the difficulty of written materials. In 1963, Klare published a comprehensive survey of readability formulas. At that time he reported the Dale-Chall formula to be the most valid. This formula is still widely used today. It is one of the formulas used as a standard in the proposed New Jersey legislation.

The major drawback of this formula is that it is extremely time consuming to apply. It requires a sample of 100 words every ten pages. Each word must be compared to a list of 3,000 words compiled by Dale. The words not appearing there, considered unfamiliar words, are then counted. After this, a mathematical formula can be applied.

Another formula which is acceptable as a standard in the proposed New Jersey legislation is the Fry Formula. This formula grades materials from grades 1-17+ and has the advantage of being one of the most easy to apply. It requires no complicated mathematics and has proved to correlate highly with other more complicated formulas.

In a 1974 article, Klare, an acknowledged expert on readability formulas, states:

> There is little to be gained from choosing a highly complex formula. A simple two variable formula should be sufficient, especially if one of the variables is a word or semantic variable and the other is a sentence or syntactic variable. Beyond these two variables, further additions add relatively little predictive validity compared to the added application of time involved..." (Klare, 1974-75, pp. 96-97)

The Fry formula is a two variable formula of the type described above. In referring to such formulas, Klare further states that though

sentence complexity is probably the real causal factor in difficulty, length is highly correlated to complexity and is easier to measure.

Another formula acceptable for determining readability in the proposed New Jersey legislation is the Flesch Formula. This is a popular formula and is used frequently in measuring readability of insurance policies.

Klare reports that comparative validity is most consistent between the Dale-Chall and Flesch formulas (Klare, 1963). Therefore, it is among the most accurate.

Drawbacks of relying on formulas to assess readability do exist. Probably the most significant drawback in regard to plain language legislation is that formulas are less accurate for short materials. Many of the legal contracts covered by plain language laws are relatively short, reducing accuracy. Another drawback is that formulas cannot take into account special vocabularies. This is not very relevant to plain language legislation, because it is precisely special vocabularies that are hoped to be eliminated.

A third drawback is that formulas, by their very nature, cannot take into account the variables in people which cause difficulty to vary.

However, they do provide a framework in which to classify difficulty of reading materials. Without formulas, establishing precise standards becomes difficult.

The literature reviewed here has included five general areas. The problem of understanding written materials produced by the federal government was first considered. Next, the language of legal contracts

and insurance policies was examined. This section included an overview of groups opposing plain language legislation. The third section concerned the level of literacy in this country. Fourth was a brief presentation of very basic approaches to writing in plain language. The last section explained the use of readability formulas.

CHAPTER III

PROCEDURES FOR DATA COLLECTION

The procedure used in collecting data from the states was direct inquiry. Addresses were obtained for legislative information councils in each of the states. Letters were sent to the councils in each state in November, 1978, requesting copies of any laws or bills requiring use of plain language in legal contracts. States which indicated that legislation would probably or possibly be introduced in 1979 sessions beginning in January were contacted again.

The data received from the inquiries were analyzed in regard to the questions in Chapter 1. That is, information from bills and laws received was tabulated to reveal differences and similarities in coverage, standards of plain language stipulated, enforcement provisions and readability level of the bills and laws themselves.

Letters soliciting related information were also sent to: The New York Bar Association, The American Bar Association, the Insurance Information Institute, Chase Manhattan Bank, the Real Estate Board of New York, and Citibank.

At the federal level, letters of inquiry were sent to the White House, each of the executive departments, and the Office of Management and the Budget. (This office is charged with assuring effective

implementation of the order.) Information regarding compliance of departments which did not reply to the inquiries was obtained from the Federal Register and direct telephone calls.

Compliance to the Executive Order was analyzed by examining the semiannual agendas required by the Executive Order and by consideration of information received from the departments.

The consumer contract plain language bills were analyzed for readability using the Fry Readability Formula.

Definition of Terms

Act

A law or statute.

Bill

A proposed law or act.

Readability

As defined by Klare the term can be used in three ways:

1. To indicate legibility of either handwriting or typography.
2. To indicate ease of reading due to either the interest-value or the pleasantness of writing.
3. To indicate ease of understanding or comprehension due to the style of writing. (Klare, 1963, p. 1)

Fry Readability Formula

This is a two factor formula used to estimate readability level. Using three one-hundred word passages, average sentence length and average number of syllables per sentence are plotted on the Graph for Estimating Readability (Fry, 1977).

Flesch Reading Ease Formula

Find the average sentence length in words and the number of syllables per 100 words. Multiply the average sentence length by 1.015. Multiply the number of syllables by .846. Add the two figures together and subtract from 206.835. This gives the Reading Ease Score (Flesch, 1946).

Limitations of the Study

No attempt was made in this study to review actions of state insurance departments regarding regulating readability of policies. Many state insurance departments regulate readability of insurance policies. Regulations issued by state insurance departments regarding readability of policies have not been collected and examined.

Another limitation of the study is that the initial letter of inquiry sent to the states did not specifically ask for Insurance Readability Acts or Bills. The letter requested laws or bills relating to plain language in consumer contracts or related information. Since a number of Insurance Readability Acts and Bills were received, they have been included in the analysis.

CHAPTER IV

FINDINGS AND DISCUSSION

Findings

The findings of the study are reported in five sections. First is a brief analysis of returns from the states. Next is a report of the findings regarding legislation for plain language in consumer contracts. The third section reports findings relating to insurance readability legislation. Fourth is a brief description of other types of plain language legislation received. Last is a presentation of the findings regarding Executive Order 12044.

Analysis of the Returns From the States

Responses were received from each of the fifty states. Therefore, a 100% response was achieved.

Among the states which had relevant bills, all sent copies except Illinois. Copies of the Illinois bills were unavailable. Therefore, summaries were used.

The returns indicated that plain language legislation falls primarily into two categories. The first relates to plain language in consumer contracts. The second is concerned with readability of insurance policies. Table 1 shows which states have enacted or proposed consumer contract or insurance readability legislation.

TABLE 1

STATUS OF PLAIN LANGUAGE LEGISLATION
IN THE UNITED STATES

SYMBOLS:

IR = Insurance Readability
CC = Consumer Contracts
X = none

State	Legislation Passed	Legislation Proposed	No Legislation Proposed
Alabama			X
Alaska			X
Arizona	IR		
Arkansas			X
California		IR	
Colorado			X
Connecticut		CC	
Delaware			X
Florida			X
Georgia			X
Hawaii			
Illinois		IR,CC[a]	
Idaho			X
Indiana			X
Iowa		CC	
Kansas			X
Kentucky		CC	
Louisiana			X
Maine			X
Maryland		CC	
Massachusetts	IR	CC	
Michigan		CC	
Minnesota	IR		
Mississippi			X
Missouri			X

TABLE 1--Continued

SYMBOLS:

IR = Insurance Readability
CC = Consumer Contracts
X = none

State	Legislation Passed	Legislation Proposed	No Legislation Proposed
Montana			X
Nebraska		IR	
Nevada		CC	
New Hampshire			X
New Jersey		CC,IR	
New Mexico		CC	
New York	CC	IR[b]	
North Carolina		CC	
North Dakota			X
Ohio		CC,IR	
Oklahoma			X
Oregon		IR[b]	
Pennsylvania		CC	
Phode Island		IR	
South Carolina	IR		
South Dakota			X
Tennessee			X
Texas	IR		
Utah			
Vermont		CC	
Virginia	IR	IR	
Washington		CC	
West Virginia		CC	
Wisconsin			X
Wyoming			X

[a]Two bills

[b]Three bills

According to information received, seven states have laws requiring plain language in either consumer contracts or insurance policies. Most of the legislation is in the form of Insurance Readability Acts. Six states reported such legislation. Only one state, New York, has passed a consumer contract plain language law.

Consumer Contract Plain Language Legislation

Plain Language legislation relating to consumer contracts has been considered in seventeen states. As of January, 1979, only one state had passed such a law. The sixteen other states had either defeated the bills, let them die in committee or were still expecting votes on them. Therefore, thirty-four percent of the states had considered the legislation but only two percent had passed it.

States which have Proposed or Enacted Consumer Contract Plain Language Bills.--New York is the only state to have passed a consumer contract plain language law. The states which have given consideration to such legislation are: Connecticut, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Nevada, New Jersey, North Carolina, New Mexico, Ohio, Pennsylvania, Vermont, Washington and West Virginia (Table 1). Identification and status of the bills are shown in Table 2.

Common Elements and Variations in New York's Law and the Proposed Bills.--Examination of the bills reveals similarity between New York's law and fourteen of the bills proposed in twelve states.

TABLE 2

IDENTIFICATION AND STATUS OF CONSUMER
CONTRACT PLAIN LANGUAGE BILLS AND LAW

State	Year	House	Number	Status
Connecticut	1977		6863	rejected
Connecticut	1978		5904	rejected
Illinois	1978	SB	1722	rejected
Illinois	1978	HB	2686	rejected
Iowa	1978			rejected
Kentucky	1978	HB	207	rejected
Maryland	1978		389	rejected
Massachusetts	1978	HB	1709	rejected
Nevada	1979	AB	46	current
New Jersey	1978	AB	536	current
New Mexico	1979	SB	23	current
New York	1978	AB	4538	passed
North Carolina	1975	SB	142	rejected
Ohio	1977-8	SB	463	rejected
Ohio	1977-8	HB	896	rejected
Pennsylvania	1978	SB	1301	rejected
Vermont	1977	HB	602	rejected
Washington	1979	SB	2018	current
West Virginia	1978	HB	1339	rejected

An examination of New York's law can help in understanding the fourteen similar bills. Table 3 lists twelve provisions. Every provision except the second appears in the New York law. Therefore, reading the provisions cited will provide an understanding of present requirements for contracts in New York. For the entire law, see Appendix A.

Among the fourteen bills resembling New York's law, areas of difference and similarity are shown in Table 3. This table shows Nevada's bill to most closely resemble the New York law. There are no substantial differences.

The other thirteen bills shown in the table vary in some provisions from the New York law. A number of the provisions have been adopted in almost every bill. Every bill is in agreement that: 1. violation does not void the agreement, and 2. violation does not constitute a defense to any action or proceeding to enforce the agreement or breech it (Items 11 and 12, Table 3).

Two other provisions appear in every proposed bill with only slight variations. One stipulates that contracts must be appropriately divided and captioned. The other states that violators are liable to the consumer who is party to the agreement in an amount equal to damages plus fifty dollars. (Items 5 and 6, Table 3.) The variation in the first appears in Washington's bill. This provides more specific guidelines for organization and printing of contracts. Variations in the latter relates to dollar amounts cited. Connecticut, Illinois and Ohio stipulate one-hundred dollar penalties instead of fifty dollars.

TABLE 3

PROVISIONS OF CONSUMER CONTRACT PLAIN LANGUAGE BILLS AS THEY COMPARE TO NEW YORK'S LAW

Provisions	NY	CT	IL	IL	IA	KY	MD	NA	NM	OH	OH	PA	VT	WA	WV
1. Written agreement involving less than $50,000 for lease for residential purposes or dealing with money, property or services used primarily for personal, family or household purposes.	y	y	y	y	y	y	y	y	Y	y		y	y	y	y
2. Written in nontechnical language.		y	y	y	y	y	y		y	y	y	y	Y	y	y
3. Technical language acceptable where necessary.	y	y						y					Y		
4. Written in clear and coherent manner using everyday words with common and everyday meanings.	y	y			y	y	y	y	y	y	y	y	y	Y	y
5. Appropriately divided and captioned.	y	y	y	y	y	y	y	y	y	y	y	y	y	Y	y
6. Violators are liable to the consumer who is party to the agreement in amount equal to damages plus fifty dollars	y	Y	y	Y	y	y	y	y	y	Y	Y	y	y	y	y

TABLE 3--Continued

Provisions	NY	CT	IL	IA	KY	MD	NA	NM	OH	OH	PA	VT	WA	WV
7. Total penalty shall not exceed $10,000 in any class action or series of class actions.	y	Y		y	y	y	y	y	y	y		y	y	y
8. If attempt in good faith to comply, not liable for penalty.	y			Y	y	y	y	y	y	y	y	y	y	y
9. No action may be brought after both parties have performed their obligations under the contract.	y			y	y	y	y	y	y	y		y	y	y
10. Attorney General has explicit authority to enforce the law.	y				Y	Y	y	Y						Y
11. Violation of act does not void agreement.	y	y	y	y	y	y	y	y	y	y	y	y	y	y
12. Violation does not constitute a defense to any action or proceeding to enforce the agreement.	y	y	y	y	y	y	y	y	y	y	y	y	y	y

Note: y = has provision
Y = with variation

The provision establishing a maximum total penalty in class actions was present in every bill except the two Illinois bills and the Pennsylvania bill. There is one variation. Connecticut sets the maximum total penalty at fifty thousand dollars instead of ten thousand. (Item 1, Table 3)

Almost every bill in this group defines contracts covered in the same way. Only one state varies, with a different dollar amount cited. New Mexico includes only contracts for under $15,000. A limit of $50,000 is placed on contracts to be covered. Therefore, none of the bills in this group cover transactions above this amount.

The provision which states that if there is an attempt in good faith to comply, there is no liability for penalty appears in eleven bills and New York's law. Only the Connecticut and Illinois bills omit this. Iowa's provision varies slightly. (Item 8)

The following provision also appears in most bills. It states that no action may be brought after both parties have performed their obligations under the contract. (Item 9) Connecticut, Illinois and Pennsylvania are the only states which omit this provision.

In regard to enforcement, the provision granting powers of enforcement to the attorney general appears as such in only one bill. (Item 10) That is Nevada's bill. Four other states discuss enforcement in the bills, but do not refer specifically to the attorney general. However, these bills do state that enforcement will be in a court of competent jurisdiction. Nine bills in this group make no reference to enforcement procedures.

The areas of greatest differences between the bills and New York's law are the provisions stipulating language to be used. (Items 2 and 3) There is disagreement as to whether contracts should be required to be written entirely in nontechnical language or whether some technical language is acceptable.

The New York law states that it does, "not prohibit the use of words or phrases or forms of agreement required by state or federal law, rule or regulation or by a governmental instrumentality." It does not state that nontechnical language must be used in contracts. However, the original law did stipulate use of nontechnical language. The requirement was omitted when the law was amended.

Nevada and Connecticut have presented these provisions in the same way as the New York law. Vermont has softened the requirement by adding the words, "where reasonably possible," in its requirement for nontechnical language. Most of the proposed bills state that nontechnical language must be used.

Washington states that language must be nontechnical and adds a stipulation which does not appear in any of the bills considered in this group. Washington's provision comparable to item 4 in Table 2 states that contracts must be, "readable and understandable to a person of average intelligence, education and reading ability." No standards are cited for what constitutes average education or reading ability.

Neither the New York law, nor any of the bills considered above establish any standards for readability. Instead they state that contracts must be written in a clear and coherent manner, using every-day words with common and everyday meanings.

In addition to the fourteen bills compared here with New York's law, five states have proposed consumer contract legislation which differs significantly from the New York law. These are Connecticut, New Jersey, Massachusetts, Michigan and North Carolina.

Although Connecticut appears in Table 2 with bills resembling New York's law, the bill considered here is a different one. As stated earlier, two bills have been proposed in Connecticut.

The Connecticut bill considered here was the first to be introduced in that state. It was defeated and the bill more closely resembling New York's law was introduced the following year. The first bill was the shortest of all the bills considered. It called for language, "reasonably understandable by a layman," or explained orally, "in the language spoken by the consumer or borrower." This bill is the only bill which is addressed to the problem of non-English speakers.

Massachusetts proposed a bill relating to retail installment sale agreements, contracts, notes, disclosure statements or any sales agreements relating to consumers. This would have required the above to be, "drafted in laymen's English wherever possible so that a reasonable consumer shall be able to comprehend the terms and contents of the agreement without resort to legal interpretation." The bill included a model consumer contract in the form of a loan note.

The bill proposed in Michigan requires that, "certain requirements and contracts be prepared so as to be understood by a person of average intelligence." This bill describes a person of average intelligence as one whose intelligence level, "is equal to the

average intelligence level of all persons who have graduated from high school in this state." The bill would have included not only consumer and insurance contracts, but also communications subject to be read by the public, which are written by public employees. If such communications are not understandable to a person of average intelligence, people receiving the communications are not required to follow the instructions or requirements they contain.

The bill permits the use of legal terms if the terms are explained in the document and the explanation is understandable to a person of average intelligence. A limit of $50,000 is set on agreements covered.

In New Jersey, both the senate and assembly have drafted substitute bills for the original plain language bill. The assembly substitute bill (Appendix B) has been passed in the assembly. It is now in the Senate Labor, Industries and Professions Committee.

This bill requires terms to be understandable for people whose reading level is not above 12th grade. It establishes a Flesch score of 50 (10th to 12th grade level). Transactions up to $50,000 are covered. However, businesses which gross less than $100,000 annually are exempt. Also, if the person borrowing, buying or leasing is represented by an attorney, the contract used is exempt.

The Senate committee substitute bill is a more comprehensive bill. A Flesch score of 60 is required (8th to 9th grade level). It allows for use of other formulas such as Fry or Dale-Chall. For these formulas an eighth grade level is required.

In addition to requiring easier to read contracts, this version does not apply the $50,000 limit to real estate or insurance. Therefore, a wider range of contracts is included.

Both versions of the New Jersey bill include a list of practices to avoid in writing clear contracts. Also, penalties in both versions are the same. Damages to a consumer can be collected up to $500. For class actions the penalty can be as high as $50,000.

Though both versions of the bill are substantially different from the law passed in New York, it does include two provisions similar to New York's. It stipulates that there is no liability if both parties have performed their obligations. Also, there is no liability if there has been a good faith attempt to comply.

Readability Levels of the Bills.--Bills from all of the states relating to plain language in consumer contracts were analyzed for readability. The Fry Readability Formula was used. Proper use of the formula requires at least three one-hundred word passages for analysis. However, some bills were too short for three such passages. In these cases it was necessary to take either three slightly overlapping samples or only two samples.

It was found that using the Fry formula all of the bills were at least equivalent to a grade fourteen reading level. Several were at or above seventeen grade level. A few scores fell off the chart on the difficult side. Since every state was found to have bills with high grade level scores on the Fry graph, the grade level breakdowns are not presented.

Insurance Readability Legislation

Six states returned copies of insurance readability laws. Eleven bills and one bill summary were also received from eight additional states (Table 2). Therefore, insurance readability legislation has been passed in 12% of the states and considered in an additional 16%. This does not indicate that the remaining states do not have insurance readability regulations. As stated earlier, a number of state insurance departments are moving toward regulations of insurance readability. This study is limited to legislative action. State insurance departments' activities and regulations have not been examined.

States Which Have Insurance Readability Bills and Acts.--The six states which responded by sending copies of Insurance Readability legislation were: Arizona, Massachusetts, Minnesota, South Carolina, Texas and Virginia. Of these, Massachusetts and Minnesota had the most comprehensive legislation.

Eleven bills for insurance readability were also received. They were from: California, Nebraska, New Jersey, New York, Oregon, (3), Rhode Island and Virginia. In addition, Illinois considered such a bill. This bill was unavailable for examination, so a summary of the bill was examined. Table 4 shows the status of such legislation and types of insurance covered.

TABLE 4

STATUS OF INSURANCE READABILITY
BILLS AND LAWS AND TYPES OF
INSURANCE THEY CONCERN

State	Year	Status	Type Insurance
Arizona	1978	passed	Commissioner must set standards
California	1977-8	rejected	Disability, nonprofit hosp. serv. plans, self insured employee benefits
Illinois	1978	rejected	All policies
Massachusetts	1977	passed	All policies
Minnesota	1977	passed	All policies
Nebraska	1979	current	Life, sickness, accident
New Jersey	1979	current	Life, health
New York*	1979	current	All policies
New York	1979	current	Insur. Dept. must set standards
Oregon	1977	rejected	All except motor vehicle liability
Oregon	1977	rejected	Motor vehicle liability
Oregon	1977	rejected	Life, indiv. annuity
Rhode Island	1978	rejected	All policies
South Carolina	1978	passed	Commissioner to set standards

*Two identical bills in Senate and House

TABLE 4--Continued

State	Year	Status	Type Insurance
Texas	1975	passed	Accident, sickness. Commissioner to set standards
Virginia	1978	passed	Commissioner to set standards for fire, automobile
Virginia	1979	current	Commissioner to set standards for accident, sickness

Common Elements, Variations and Readability Standards.--First to be considered here are the acts. These fall into two categories. First is legislation authorizing the state insurance department or commissioner to establish readability standards. Second is legislation which directly establishes standards for readability.

Acts which fall into the first category are from Arizona, South Carolina, Texas and Virginia. All of these laws were passed between 1976 and 1978. They vary in regard to the type of insurance the department, commission or commissioner must regulate.

Arizona does not specify what type of insurance must be regulated. The law refers to, "various types of insurance policies." South Carolina refers to, "commonly purchased insurance contracts."

The two states which have legislated directly on the matter of insurance readability are Massachusetts and Minnesota. According to the information received, Massachusetts was the first state to pass an insurance readability law which provided specific standards for insurance forms. This law became effective in July, 1978. The Minnesota law, which becomes effective in June, 1980, is very similar, but has less stringent readability requirements.

The Massachusetts law covers every insurance policy issued in the state. It establishes precise readability standards. A minimum score of 50 on the Flesch scale is required for acceptability. This is approximately 10th to 12th grade level. The law also provides a number of specifications for the purpose of making forms more readable. Ten point type is required as well as a table of contents or alphabetical subject index. Margins and type are to be set so as

not to interfere with readability. The style is to be such that no undue prominence is given to any portion. In addition, the organization of the content and summary are expected to aid in understanding the policy. The bill specifically explains use of the Flesch scale.

The Minnesota law also applies to all policies and contracts of direct insurance. Only master contracts for group insurance (groups of ten or more) are exempt. This law establishes a minimum Flesch readability score of 40. (This is approximately college level reading.) In addition, it specifically provides other requirements to aid in readability of the policies. These include: 1. use of commonly used language, 2. logical and clear arrangement, 3. legible format, and 4. a cover sheet with an index of the major provisions, limitations and conditions of the policy as well as several other provisions.

Examination of the bills showed the Nebraska and Virginia bills to be most current. Both are being considered in the 1979 legislatures. A hearing has already been held on the Nebraska bill and a vote is probable in the near future.

The Nebraska bill is similar to the acts in Massachusetts and Minnesota. It establishes a minimum Flesch score of 50 (10th to 12th grade level) which is the same as the Massachusetts law. The bill differs in that it is the only insurance readability act or bill examined which will accept an equivalent score on any other comparable test approved by the commissioner.

Two of Oregon's three bills would have provided readability requirements similar to the Massachusetts law. However, they were proposed in 1977 and were not passed. One of these bills would have required a Flesch score of 60 (about 9th grade level).

The third Oregon bill differed in that it directed the commissioner to establish standards. It related to individual life insurance policies of $25,000 or less. It would have required the commissioner to provide a format for disclosure statements for individual life and health insurance.

The Illinois bill was not available for examination. Though the summary states that policies must be accompanied by a Flesch score, no minimum score is given.

The California bill was more limited in coverage than the Massachusetts, Minnesota and Nebraska acts and bill. It was also more limited in requirements for readability. No minimum Flesch score was established. However, specific requirements for simplifying text were provided. It was stated that average sentence length should not exceed 28 words. Policies were to be, "in language which can be readily understood and interpreted by any reasonable person."

The Virginia bill is being considered in the 1979 legislature. It is identical to the Virginia act cited previously. In this case it applies to accident and sickness insurance.

Rhode Island's bill proposed in 1978 died in committee. It was a short bill without specific standards. This bill called for, "provisions to be readily understood by the ordinary layman. The standard for such language shall be that a person of average intelligence and experience will be readily able to understand the terms of such policy

or contract." This bill applied to all types of insurance.

The discussion section includes a consideration of strengths and weaknesses of the insurance readability legislation.

Other Plain Language Legislation

A number of states returned bills and laws requiring plain language in areas other than consumer contracts or insurance policies. Though this information is probably not complete, it is of interest.

Hawaii requires plain language in government writing. This is a result of a constitutional amendment adopted on November, 1978 ballot. This amendment states:

> Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms... Governmental writing should be concise, simple, and understandable to assure the people have access to the government's resources and information. (Constitutional Amendment, Note 2.)

Oregon has legislated that state income tax forms must be readable. This law becomes effective in January, 1980. It requires a Flesch Reading Ease score of 60 (8th or 9th grade) or higher on individual state income tax forms. It specifies simple words in their commonly used senses should be used. The law also calls for an index at the beginning of the instructions. Specifications relating to type size, margins, headings, etc., are stated.

The remaining bills have not been passed. Three of these bills also were proposed in Oregon. One relates to digests or summaries of measures prepared by the Legislative Assembly. The bill was proposed in 1977 and would have required these digests or summaries

to yield a Flesch score of at least 60. The other two bills are under consideration in the 1979 legislature. They both relate to election materials. One would require that measures for referendum or initiative be explained simply with both pros and cons. The statement of explanation would be available to the public well in advance of an election. The second would assure that ballot titles are clear and understandable.

This concludes the findings from information received from the states. At the federal level there are two areas of concern. First is an examination of what President Carter's Executive Order requires. Second is a report of the findings regarding compliance to the order.

Executive Order 12044

Requirements of the Executive Order.--President Carter's Executive Order (12044) was issued on March 23, 1978. In this order he directed executive agencies to improve regulations. He stated that, "Regulations shall be as simple and clear as possible. They shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on state and local governments," (Carter, 1978, p. 558).

To achieve this goal, he established a procedure for developing significant regulations. Agencies were directed to:

1. publish at least semiannually an agenda of significant regulations under review;
2. have agency heads review issues to be considered;
3. give the public an opportunity to participate in development of regulations;

4. have the heads of agencies approve the regulations before they are printed in the Federal Register;
5. develop criteria for identifying which regulations are significant.

The fourth stipulation above listed eight subheadings of factors for which the agency head should check in approving regulations. They all relate to making sure the regulations are not unnecessarily burdensome to the public and are easy to understand.

In addition, the order directs agencies to review existing regulations periodically. They are to develop selection criteria and a list of possible regulations for review. These are to be included in the semiannual agendas.

Not included in the executive order are independent regulatory agencies. President Carter did, however, urge them to cooperate with the spirit of the order.

Analysis of the Returns.--Requests for information at the federal level yielded a lower rate of response than at the state level. Of the twelve executive departments contacted, five responded. This is a 41% response.

However, since President Carter's order directed plans for implementation to be published in the Federal Register, the lack of response from direct inquiries did not greatly affect information gathered. Reports for the remaining departments were obtained from the Federal Register.

The five responses were received from the departments of: Agriculture; Housing and Urban Development; Interior; Commerce; and Health, Education and Welfare.

Extent of Compliance by the Executive Departments.--President Carter's Executive Order requires that each Executive Department issue a semiannual agenda. The agendas state the methods to be used in future writing of regulations. They also list the regulations to be revised or developed in coming months.

Examination of the Federal Register and information received from the responding departments reveals that eleven of the twelve agencies have published semiannual agendas required by the order (Table 5). The Justice Department is the one department which has not yet published a semiannual agenda. However, a spokesman at the Office of Management and the Budget states that a plan for writing regulations has been submitted and approved.

Discussion

Plain Language Legislation

The review of the literature indicated a need for plain language in contracts and regulations. Findings indicate that the need has been recognized in many states.

Problems Which Have Arisen.--The findings also demonstrate that given the need for such legislation, drafting acceptable bills is a difficult problem. Revisions are common, as are demands for changes from special interest groups.

TABLE 5

DATES OF SEMI-ANNUAL AGENDAS PUBLISHED
BY EXECUTIVE DEPARTMENTS
IN THE FEDERAL REGISTER

Department	Date	Department	Date
Agriculture	11-1-78	Justice	*
Commerce	1-9-79	Labor	1-26-79
Defense	11-30-79	State	11-22-78
HEW	1-19-79	Transportation	9-21-78
HUD	1-5-79	Treasury	11-8-79
Interior	12-13-78	Energy	1-3-79

*Agenda has been approved, but not yet published.

Note: Technically all of the departments which have issued semiannual reports have complied with the order. Difficulties in determining extent of compliance are considered in the discussion.

For example, when New York originally passed its plain language law, use of technical language was prohibited. Consequently, much opposition to the law was voiced. The law was then amended. The amended law omitted the stipulation that nontechnical language must be used. Subsequent bills have varied in regard to this stipulation.

Problems of interpretation are common. When New York's law was passed, there was some confusion regarding whether insurance policies were covered. Insurance policies are not covered, but this is not evident from reading the law.

A major problem which emerges from examining the consumer contract legislation is the problem of determining what is commonly understandable language. There is general agreement that contracts should be easily understood. But determining how to achieve the goal is a complex problem. Whether a bill states contracts should be in common, everyday language or that it should be understandable by a person of average intelligence, there are problems of interpretation. However, specifically mandated readability standards were specifically avoided in New York's law because of fears of inherent problems. It was believed that setting specific standards would require use of experts for drafting agreements and testifying regarding compliance (Givens, 1978).

The New Jersey bill does establish specific readability standards using the Flesch formula. If the bill is passed, there will be an opportunity to analyze which approach is more successful.

New York's Plain Language Law.--An obvious question regarding New York's law is, is it working? The answer appears to be that it is too early to tell.

Assemblyman Peter Sullivan, sponsor of the law, believes it is. He is very satisfied with the new contracts he has seen (Follow-Up, 1979).

On the other hand, in the same article, Wilbur H. Friedman, spokesman for the New York County Lawyers' Association, says his group is still working to get rid of the ambiguities in the law.

Evidently, fears of increased litigation have not yet materialized. The New York Bar Association was contacted regarding this matter. They are not aware of any litigation to date. However, it is true that the law has only been in effect for four months. It is still early to draw conclusions regarding this matter.

Lease and retail installment contracts used in New York were examined for readability. Using the Fry graph, readability levels were found for each type of contract before and after enactment of the plain language law.

Considering the leases first, it was found that the old lease was too difficult to chart on the Fry graph. The Fry graph presupposes that every 100 word passage will contain a minimum of two sentences. Although eight samples were taken, the average number of sentences per 100 words was under two.

The 1978 lease did prove to be somewhat easier reading. The first three 100 word samples had an average number of sentences too low to chart. However, when eight samples were taken the average

number of sentences per passage was 2.2. The reading level of the new lease was found to be grade 13 on the Fry graph.

The second type of contract examined was a retail installment contract. Using three 100 word samples on the old contract yielded an average sentence length too long to graph. However, adding a fourth sample made use of the graph possible. The contract was found to be written at a grade 14 reading level.

The new contract was definitely easier reading. Using either three or four samples the level fell between tenth and eleventh grades.

Readability of the Bills.--Legislating for plain language has proved to be a difficult process for a number of reasons. Not only is the area of concern a relatively new one, but few writers of legislation have had any experience in attempting to write bills in simple language.

There is some disagreement regarding the necessity of plain language bills to be written as plainly as the contracts they cover. Many believe that a bill specifically mandating use of plain language, should itself contain plain language. They consider it absurd to write difficult to read laws requiring others to write in plain language.

Another point of view is that the laws will not be read by the same clientele as the contracts. The contracts should be easy to read because many of the people entering into them do not have strong reading skills. The laws will not have the same clientele attempting to read them.

When the Fry formula was applied to all the consumer contract bills, all were found to be written at college level reading or above. This means that everyone expected to comply would need to have either very strong reading skills or assistance in determining requirements.

The literacy level of the average consumer is no doubt lower than that of those issuing contracts. Therefore, perhaps a middle ground in the controversy over readability of laws would provide the best solution. Though the laws need not be as simple to read as the contracts, they should not require a lawyer for interpretation.

In New Jersey, the proposed bill has been rewritten a number of times. This has been done not only to make desired changes, but also to attempt to simplify the wording of the bill.

One version written by Assemblyman Baer (D-Bergen) contained one sentence with over 100 words. In fact, Baer, an advocate of plain language, defended one fifty-nine word sentence as not being unnecessarily complex (Third Try for Plain English, 1978).

The law in New York was originally written in more simple language than appears in its final form. The sponsor, Peter Sullivan, was questioned about this. His reply was simply that there are a lot of lawyers in Albany (Safire, 1977).

It appears that the habit of writing legislation in a difficult form is not easy to break. Hopefully, attempts to write plain language laws in plain language will focus attention on the language of other forms of legislation.

There appears to be greater difference in the readability of the bills than is reflected by the Fry Graph scores. The Fry formula is a two variable formula with sentence length as one of the variables. It does not make allowances for colons and semicolons.

Most bills have extremely long sentences. However, some are much more easily read than others because they are subdivided effectively with numbered sections separated by colons or semicolons. Bills which are well organized and arranged in an orderly format are more easily read than others despite the long sentences.

It is possible that the Flesch formula would reveal greater differences among bills. This formula makes allowances for use of semicolons and colons.

The Executive Order

The Executive Order required that each executive department publish a semiannual agenda in the Federal Register. These agendas were to state new procedures for writing regulations. Also, regulations to be developed or revised were to be announced in these agendas.

Agendas.--The agendas which state new procedures for writing regulations and list regulations to be developed or revised differ greatly from department to department. Areas of difference were noted in: 1. determination of what is a significant regulation and what is not; 2. the amount of detail provided regarding new procedures for rule making; and 3. differences in listing of regulations to be reviewed.

First, the Executive Order applies only to significant regulations. However, there is no uniform criteria for determining what regulations fall into this category. Each department has been directed to establish its criteria in this matter. This is logical in that the departments have widely divergent functions. However, it makes the extent of compliance by each department contingent on their own definition of significant regulations.

The agendas for each department vary tremendously in length and detail. Some departments, such as State, give procedures for compliance very briefly and provide no specific details. Others such as HEW have published their entire rule making procedure in great detail.

The third area of difference noted is the approach to listing of regulations to be reviewed. Some departments have omitted this from the recent agendas and are presumably reviewing the regulations initially designated in the Spring of 1978. Others have provided detailed lists of regulations to be reviewed. It appears that some departments are better organized for the review process than are others.

Analysis of the agendas reveals that more emphasis is being placed on the rule making process than on the issue of plain language. One can only hope that requiring high level approval for every significant regulation will lead to more readable regulations. Specific standards of readability for regulations are not being established. Guidelines for producing clear language are also absent from the agendas.

Information Received From Executive Departments.--The Executive Departments which responded to inquiries provided the following information.

At the Department of Agriculture, the Office of Budget, Planning and Evaluation has recently started a series of meetings with agency administrators to review their internal procedures under the Executive Order. These meetings will include discussing their process for review of the language in regulations.

Mr. L. Juers, a spokesman for this office, states that he believes about one more year is required before real progress will be seen.

Similar information was received from the Department of Housing and Urban Development. Mr. B. Bloomberg, Director of the Office of Regulations there, states the department will move into full implementation in February, 1979.

The Department of Health, Education and Welfare had a head start in the process of complying to the order. Prior to the order, President Carter had repeatedly urged the departments to simplify regulations. Mr. Califano had begun, "Operation Common Sense," in September, 1977. In his initial memorandum (September 12, 1977, Note 4) he states:

> Nothing has tarnished the reputation of this Department as badly as the external perception that we cannot produce good, clear regulations. Nothing would do more to restore confidence than positive change in this aspect of the Department's operations.
>
> The effort required by this undertaking will be massive, long range, and time consuming. I anticipate that it will take about five years to complete.

In his September, 1977 memo, Mr. Califano assigned the Office of the Deputy General Counsel for Regulation Review the responsibility to coordinate the recodification effort.

According to Inez Smith Reid, Deputy General Counsel for Regulation Review, Operation Common Sense has so far

> resulted in deletion of over 700 pages of obsolete or rarely used HEW regulations from the Code of Federal Regulations. By March, 1979, HEW agencies will have completed their review and revision of over 1,300 pages of regulations in the Code of Federal Regulations. (Reid, 1979)

Samples of simplified regulations were provided by Ms. Reid. One had been reduced from approximately twelve hundred words of difficult reading to an easy to read format of one hundred twelve words. (Runaway Youth Regulations, 1351.16) Another sample was also reviewed which had been greatly simplified. In addition, new regulations regarding age discrimination were examined. These rules are also written clearly.

Whether these excellent examples are representative of the overall progress at HEW is difficult to know. However, the Social Security Administration, which is part of HEW, also is active in recodification. It plans to recodify all its regulations within the next three years. An attempt is being made to use language understandable at a tenth grade level. Also, active rather than passive voice is being used whenever possible (Simmons, 1979).

The Commissioner of the Office of Education is also actively encouraging plain language. He conducts classes to teach civil servants how to write clearly and simply (Preston, 1979).

It is the feeling at the Office of Management and the Budget that in time changes will be significant throughout the executive departments. This office is overseeing compliance with the Executive Order. The feeling there is that high level approval for every significant regulation will inevitably bring change.

It appears that it is really too early to assess overall changes brought on by the order. The change process is a slow one. Departments are beginning to move towards implementation, but more time is needed before significant changes are clearly visible throughout the Executive Departments.

Though it was expected that examination of the Executive Order would shed light on effective approaches for cutting down on bureaucratic use of words, it has not. As executive agencies move more fully into implementation of the order this will become more possible.

CHAPTER V

SUMMARY AND CONCLUSIONS

Legislation at the State Level

This study has examined the status of plain language legislation in the fifty states. It has also examined the extent of compliance by Executive Departments to President Carter's Executive Order 12044. This order mandates use of plain language in government regulations.

At the state level, laws and bills regarding plain language in consumer contracts or insurance readability were collected and examined.

It was found that only one state, New York, has passed a consumer contract plain language law. However, sixteen states have considered such legislation. Four states are currently considering the legislation and the others have defeated it or let it die in committee.

New Jersey is considering the only bill which sets specific readability requirements for contracts. There are two versions of the bill. One, which has passed in the Assembly, requires a Flesch score of 50 (10th to 12th grade level). The Senate version would require an eighth grade readability level. Both versions are now in the Senate Labor, Industries and Professions Committee.

There have been more insurance readability laws passed than consumer contract laws. Six states reported such laws and an additional eight have proposed them. Therefore, 12% have passed such laws and an additional 16% have considered them.

Many of the insurance readability laws and bills set specific readability standards. The state with the strongest law was found to be Massachusetts.

The following conclusions can be made from this study.

1. More progress has been made in passing laws for readability of insurance policies than for consumer contracts.
2. Most consumer contract plain language bills do not establish specific readability standards. Only one of all the bills examined did so.
3. Most insurance readability laws and bills do establish specific readability standards. The standards most often used is the Flesch formula. The most commonly cited minimum score is 50.
4. New York's consumer contract plain language law is being used as a model in many states.
5. Enforcement of most proposed consumer contract bills and New York's law will be difficult. Penalties are low for noncompliance and the "good faith" provision makes imposing any penalties difficult.
6. Consumer contract plain language bills are not, as a rule, written in plain language.
7. Insurance readability laws are easier to enforce than consumer contract bills (or New York's law).

The Executive Order

At the federal level, President Carter's Executive Order 12044 (March 23, 1978) required all executive agencies to revise their procedures for writing regulations. It required that regulations be written in clear language. Agencies were directed to publish semiannual agendas in the Federal Register. These agendas would state new procedures for writing regulations and list specific regulations to be developed or revised.

It was found that all but one of the twelve executive departments had published their procedures for regulations by January, 1979. Though the Justice Department had not, it had submitted a plan and had it approved.

However, assessment of real progress made in simplifying language was difficult at this point. Most departments are just now getting underway in the new systems of rule making.

The following conclusions can be made regarding the Executive Order.

1. The executive departments have complied to the order to the extent of developing new procedures for writing regulations.
2. HEW shows real progress in improving regulations.
3. Most departments are just getting underway in simplifying regulations.

In regard to both plain language legislation and the executive order, it appears that more time is needed before the real impact of either can be determined.

Suggestions for Further Research

It is evident that the plain language movement is gaining momentum. Because the New York law regarding consumer contracts is so new and others are still to be acted upon, a study of such legislation conducted in two or three years will be much more informative. This will allow time to assess the effects of the legislation, an area hardly touched upon in this study. Though the New York Bar Association reported that to their knowledge no litigation has resulted from the legislation, more time is needed to see what develops.

It is also suggested that research regarding the extent and effect of insurance readability laws be undertaken in two or three years. There have been fears in this area as well that the legislation would cause increased litigation. An investigation of this matter conducted in several years would be interesting.

If New Jersey's consumer contract plain language bill is passed, a study of the effects of this law as opposed to New York's law would be of value. Perhaps such a study could resolve the question of whether establishing precise readability standards is beneficial or causes difficulties.

In regard to President Carter's Executive Order 12044, additional research will also be of value in one or two years. A study comparing the readability level of the Federal Register before and after the order, would be of value. All significant regulations are published in the Federal Register. Therefore, a study of the readability of

the Federal Register before the order and several years after it would probably be the most effective and direct way to measure the success of the order.

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APPENDIX A

NEW YORK STATE
PLAIN LANGUAGE LAW

STATE OF NEW YORK

12718

IN ASSEMBLY

April 18, 1978

Introduced by COMMITTEE ON RULES--(At request of M. of A.P.M. Sullivan) read once and referred to the Committee on Consumer Affairs 2nd Protection

AN ACT to amend obligations law, in relation to plain language requirements for certain agreements involving consumer transactions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions b and c of section 5-701 of the general obligations law, as added by chapter seven hundred forty-seven of the laws of nineteen hundred seventy-seven, are hereby amended to read as follows:

(b) 5-702. *Requirements for use of plain language in consumer transactions.*

a. Every written agreement entered into after (June) *November* first, nineteen hundred seventy-eight, for the lease of space to be occupied for residential purposes, or to which a consumer is a party (wherein) *and* the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes must be:

1. Written in (non-technical language and in) a clear and coherent manner using words with common and every day meanings;

2. Appropriately divided and captioned by its various sections.

Any creditor, seller or lessor who fails to comply with (the foregoing provisions of) this subdivision shall be liable to a consumer who is a party to a written agreement governed by (the provisions thereof) *this subdivision* in an amount equal to (the sum of) any actual damages sustained plus *a penalty of* fifty dollars. The total class action penalty against any such creditor, seller or lessor shall not exceed ten thousand dollars *in any class action or series of class actions arising out of the use by a creditor, seller or lesser of an agreement which fails to comply with this subdivision.* (These penalties) *No action under this subdivision* may be (enforced only in a court of competent jurisdiction, but not) *brought* after

both parties to the agreement have fully performed their obligation under such agreement, nor (against) *shall* any creditor, seller or lessor who attempts in good faith to comply with this (section) *subdivision be liable for such penalties.* This subdivision shall not apply to agreements involving amounts in excess of fifty thousand dollars *nor prohibit the use of words or phrases or forms of agreement required by state or federal law, rule or regulation or by a governmental instrumentality.*

(c) *b.* A violation of the provisions of subdivision (b) *a* of this section shall not render any such agreement void or voidable nor shall it constitute:

1. A defense to any action or proceeding to enforce such agreement; or

2. A defense to any action or proceeding for breach or such agreement.

c. In addition to the above, whenever the attorney general finds that there has been a violation of this section, he may proceed as provided in subdivision twelve of section sixty-three of the executive law.

2. This act shall take effect immediately.

EXPLANATION--Matter in italics is new; matter in parenthesis () is old law to be omitted.

APPENDIX B

NEW JERSEY PLAIN LANGUAGE BILL

ASSEMBLY COMMITTEE SUBSTITUTE
SENATE COMMITTEE SUBSTITUTE

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, NO. 536

STATE OF NEW JERSEY

ADOPTED JUNE 22, 1978

An Act to require that certain written agreements be in plain language and appropriately divided and captioned and providing penalties for violations.

Be It Enacted *by the Senate and General Assembly of the State of New Jersey:*

1. Title.

This act shall be known and may be cited as the "Plain Language Agreement Act."

2. Understandable terms required. Written agreements covered under this act shall only permit the following terms:

a. Terms whose meaning is generally understandable to persons other than person with more than a twelfth grade reading level, professionals or specialists in the particular field. These terms shall be excluded when their generally understood meaning is contradictory to the applicable legal or technical meaning.

b. Necessary technical specifications of a product or service.

3. Clear composition required. Language and structure used shall meet the following requirements:

a. Sections shall be appropriately divided and captioned.

b. All text shall be no less than 10 point type.

c. Sentences shall not have unnecessary length or degree of complexity.

d. Cross references that are unnecessarily confusing shall not be used.

e. Definitions which are contradictory to generally understood meanings shall not be used.

f. Sentences that have double negatives or exceptions to exceptions shall not be used.

g. Sentences and sections shall not be arranged in a confusing sequence. They shall be in a logical order.

4. Written agreements covered. This act shall only apply to standard form agreements in which the subject of the transaction is primarily for personal, family or household purposes. It is limited to the following transactions:

a. A real estate transaction.

b. A transaction involving rental of a residential unit within premises which include more than three rental units.

c. A transaction for money, personal property, a product or service, including insurance, involving less than $50,000.

5. Language covered. This act shall not apply to the following language:

a. Language which is expressly defined, required or permitted by Federal or State law or regulation.

b. Language which is drafted as a result of bona fide negotiations between the parties to the agreement, or for sole use in one agreement.

6. Persons excluded. This act shall not apply to any of the following persons:

a. A creditor, seller or lessor using the agreement in businesses producing less than $10,000.00 gross annually or in nonbusiness uses.

b. A borrower, purchaser or lessee who is represented by an attorney. This fact shall be established by the attorney's signed statement on the agreement.

7. Violators' liability. Any creditor, seller or lessor who violates this act shall be liable to a borrower, purchaser or lessee who is a party to the agreement. The liability shall be determined by a court of competent jurisdiction to be equal to the sum of the following:

a. Actual damages sustained.

b. Punitive damages not over $500.00.

c. Costs of the action.

d. Reasonable attorney's fees.

Rights and remedies under any other law shall continue.

8. Class action limitation. The total class action punitive damages against any person shall not exceed $50,000.00. This includes a series of class actions arising out of the use of identical standard form agreements.

9. Enforcement constraint. No punitive damages under this act shall be enforced against any person who attempts in good faith to comply with this act. No punitive damages shall be enforced where the text of an agreement achieves a minimum Flesch scale readability score of fifty. The Flesch scale readability score shall be determined by the Flesch readability formula. The formula is set forth in The Art of Readable Writing by Rudolf Flesch (25th Anniversary Edition, Revised and Enlarged; Harper & Row, Publishers).

Also no punitive damages shall be awarded after all parties to the agreement have fully performed their obligations under the agreement.

10. Agreement remains in force. A violation of this act shall not render any agreement void or voidable. A violation of this act shall not constitute a defense to any other action or proceeding for enforcement or breach of agreement. No provision for renewal of an agreement shall be invalid merely because compliance with this act changes the form of the renewed agreement.

11. Waiver prohibited. No agreement shall contain a waiver of any rights under this act.

12. Processing fee authorized. Where any State agency required by law to process agreements finds this act will cause it additional expense, it may charge an appropriate fee. The fee shall only be charged applicants for a total of 2 years. It shall not exceed the amount needed to recover actual expenses.

13. Enactment. This act shall take effect on the three hundred and sixty-fifth day after the date of enactment, except that section 12, and steps necessary for its implementation, shall take effect immediately.

SENATE COMMITTEE SUBSTITUTE

FOR ASSEMBLY, No. 536

STATE OF NEW JERSEY

ADOPTED JUNE 22, 1978

AN ACT CONCERNING SIMPLE, CLEAR, UNDERSTANDABLE AND EASILY READABLE LANGUAGE FOR CONSUMER CONTRACTS

SECTION 1. For purposes of this act, the term "consumer contract" means a written agreement in which a natural person leases or licenses real or personal property, obtains credit, obtains insurance coverage, borrows money or purchases real or personal property or services, including professional services, for cash or on credit and the money, property or services obtained are for personal, family or household purposes.

Consumer contract shall also mean all documents and writings required to complete the consumer transaction.

SECTION 2. "Primary state regulator" means that state agency or commissioner that has licensing and/or general regulatory authority over the creditor, seller, insurer or lessor, and in the specific case of a commercial bank, mutual savings bank, savings and loan association, credit union or finance company shall mean the banking commissioner. In the case of an insurance company it shall mean the insurance commissioner.

SECTION 3. Every consumer contract entered into on or after the effective date of this act shall be written in a simple, clear, understandable and easily readable manner. In determining whether a consumer contract has been written in a simple, clear, understandable and easily readable manner, a court shall take into consideration the standards set forth in Sections 12A, 12B, 13 and 14 of this act. Use of technical terms or words of art shall not in and of themselves constitute a violation of this act.

SECTION 4. Any creditor, seller, insurer or lessor who fails to comply with Section 3 of this act shall be liable to a consumer who is a party to the consumer contract for actual damages sustained plus punitive damages in an amount up to Five Hundred Dollars. Such creditor, seller, insurer or lessor shall also be liable for the consumer's reasonable attorney's fees and costs as awarded by a court.

SECTION 5. Class actions may be brought under the provisions of this act, but the amount of punitive damages shall be limited to Fifty Thousand Dollars against any one seller, lessor, insurer or creditor. This section may be enforced only in a court of competent jurisdiction.

SECTION 6. There shall be no liability under Sections 4 and 5 if (a) both parties to the contract have performed their obligations under the contract, (b) the creditor, seller, insurer or lessor attempts in good faith to comply with this act in preparing the consumer contract or (c) the contract is in conformity with any official rule, regulation, or the opinion or interpretation of a state official

authorized by Section 9 of this act to issue approvals as to the form of such contracts. A fee may be charged for expenses incurred by the state agency for processing applications under this act.

SECTION 7. If any state or federal law or regulation or state or federal court decision or state or federal agency, including quasi-governmental agencies requires or definitely permits the use of specific language or a specific form in or for a consumer contract, the use of such language shall not be a violation of this act.

SECTION 8. This act shall not preclude a debtor, buyer, insured or lessee from making any claims which would have been available to him if this act were not in effect.

SECTION 9. Any creditor, seller, insurer or lessor may request an opinion from the appropriate state official as to whether a proposed consumer contract satisfies the requirement imposed by Section 3 of this act. Each creditor, seller, insurer or lessor who has a primary state regulator may request such primary state regulator to issue such an opinion and each such regulator is authorized to entertain and rule on such requests.

SECTION 10. Any creditor, seller or lessor who does not have a primary state regulator is authorized to request such an opinion from the Office of Consumer Protection which is authorized to entertain and rule on such requests. Any national banking association, federal savings and loan association or federal credit union

may obtain such an opinion from its federal regulator once federal legislation so provides.

SECTION 11. This act shall not apply to consumer contracts involving amounts of more than Fifty Thousand Dollars, but no such dollar limitation shall apply to consumer contracts involving real estate or insurance.

SECTION 12A. To obtain the objectives of the consumer contract being written in simple, clear, understandable and easily readable language, the following are examples of practices that a court or regulator shall consider in determining whether the consumer contract complies with this act.

(1) Cross references that are confusing.

(2) Sentences shall not be greater length than necessary.

(3) Sentences that contain double negatives and exceptions to exceptions.

(4) Sentences and sections in a confusing or illogical order.

(5) The use of words with obsolete meanings or words that differ in their common ordinary meaning from their legal meaning.

(6) Frequent use of old English and middle English words and Latin and French phrases.

SECTION 12B. Examples of practices that shall be first taken into consideration in determining whether the consumer contract complies with this act are:

(1) Sections shall be logically divided and captioned.

(2) All text shall be no less than 10 point type, one point leaded. Ink to paper contrast shall not unreasonably interfere with the readability of the contract.

(3) A table of contents or alphabetical index shall be used for all contracts with more than 3,000 words or more than three pages of printed text.

(4) Conditions and exceptions to the main promise of the agreement shall be given equal prominence.

SECTION 13. Readability Standards. Any consumer contract must be understandable and easily readable by a person with an eighth grade reading level. Readability formulas to determine the reading level of a consumer contract shall be the Flesch Readability formula and any other comparable readability formula in wide use such as Dale-Chall and the Edward Fry formula.

SECTION 14. Example of Flesch Readability Formula. A consumer contract shall be considered to meet readability standards if it complies with the Flesch readability formula which reads as follows:

(a) Where the text of the agreement achieves a Flesch readability score of at least 60. The score shall be determined as set forth in the Art of Readable Writing by Rudolf Flesch (25th Anniversary Edition, Revised and Enlarged; Harper & Row, Publishers.)

(b) Where the average sentence length and word length of the contract as a whole is no more than any of the following:

(1) 15 words per sentence and 155 syllables per 100 words.

(2) 20 words per sentence and 150 syllables per 100 words.

(3) Any similar combination in which the numbers total no more than 170.

A series of words that ends with a period or colon shall be counted as a sentence. Captions or tables shall not be included.

SECTION 15. No consumer contract shall contain a waiver of any rights under this act. This act shall not apply to consumer contracts negotiated at arms length on an individual basis. A violation of this act will not render any consumer contract void or voidable or serve as a defense in an action to enforce the consumer contract for breach thereof.

SECTION 16. Whenever the Attorney General finds that there has been a violation of this Act, he may proceed to seek injunctive relief against such illegality.

SECTION 17. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

SECTION 18. This act shall take effect on the 365th day after the date of enactment.